

AMENDED IN SENATE JULY 8, 2003

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 17

Introduced by Assembly Member Kehoe

(Coauthors: Assembly Members Chan, Chu, Diaz, Firebaugh, Goldberg, Hancock, Koretz, Laird, Leno, Levine, Lieber, Longville, Montanez, Nation, Oropeza, Steinberg, Vargas, and Wiggins) Wiggins, and Yee)

(Coauthors: Senators Burton, Kuehl, and Vasconcellos)

December 2, 2002

An act to add Section 10295.3 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 17, as amended, Kehoe. State contracts: acquisition of goods or services.

Existing law authorizes the Department of General Services to contract with suppliers to acquire goods and services for state agencies.

This bill would prohibit a state agency from entering into a contract for the acquisition of goods or services *in the amount of \$100,000 or more* with a vendor or contractor who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between the domestic partners and spouses of those employees, except as otherwise specified. *This bill would specify that a contractor or vendor is not deemed to discriminate*

between employees with spouses and employees with domestic partners in the provision of benefits if the contractor or vendor, in providing the benefits, pays for the actual costs incurred in obtaining the benefit.

This bill would also require that every state contract to acquire goods and services contain a statement by the vendor or contractor certifying that the vendor or contractor is in compliance with these provisions. *The bill would require that the contract be subject to certain penalties if the contractor or vendor falsely certifies its compliance, unless the vendor or contractor provides proof that it has complied, or is in the process of complying, with these provisions.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10295.3 is added to the Public Contract
2 Code, to read:

3 10295.3. (a) (1) Notwithstanding any other provision of
4 law, no state agency may enter into any contract for the acquisition
5 of goods or services *in the amount of one hundred thousand dollars*
6 *(\$100,000) or more* with a vendor or contractor who, in the
7 provision of benefits, discriminates between employees with
8 spouses and employees with domestic partners, or discriminates
9 between the domestic partners and spouses of those employees.

10 (2) *For purposes of this section, "contract" includes contracts*
11 *with a cumulative amount of one hundred thousand dollars*
12 *(\$100,000) or more per vendor or contractor in each fiscal year.*

13 (3) For purposes of this section, "domestic partner" means one
14 of two persons who has filed a declaration of partnership with the
15 Secretary of State pursuant to Division 2.5 (commencing with
16 Section 297) of the Family Code.

17 ~~(3)~~

18 (4) These benefits may include, but are not limited to:

19 (A) Bereavement leave.

20 (B) Family medical leave.

21 (C) Health benefits.

22 (D) Membership or membership discounts.

23 (E) Moving expenses.

24 (F) Pension *benefits*.

25 (G) Retirement benefits.

1 (H) Travel benefits.

2 ~~(4)~~

3 (5) This section does not apply to any contracts executed or
4 amended prior to July 1, 2004, or to bid packages advertised and
5 made available to the public, or any competitive or sealed bids
6 received by the state, prior to July 1, 2004, unless and until those
7 contracts or property contracts are amended after June 30, 2004,
8 and would otherwise be subject to this section.

9 (b) Contractors or vendors shall treat as confidential to the
10 maximum extent allowed by law or by the requirement of the
11 contractor's or vendor's insurance provider, any request by an
12 employee or applicant for employment for domestic partner or
13 spousal benefits or any documentation of eligibility for domestic
14 partner or spousal benefits submitted by an employee or applicant
15 for employment.

16 (c) After taking all reasonable measures to find a contractor or
17 vendor that complies with this section, the requirements of this
18 section may be waived under any of the following circumstances:

19 (1) Whenever there is only one prospective contractor willing
20 to enter into a specific contract with the state agency.

21 (2) If the contract is necessary to respond to an emergency that
22 endangers the public health or safety and no entity which complies
23 with the requirements of this section capable of responding to the
24 emergency is immediately available.

25 (3) Where the requirements of this section violate, or are
26 inconsistent, with the terms or conditions of a grant, subvention or
27 agreement with a public agency or the instructions of an authorized
28 representative of any public agency with respect to any grant,
29 subvention, or agreement, provided that a good faith attempt has
30 been made by the agency to change the terms or conditions of any
31 grant, subvention, or agreement to authorize application of this
32 section.

33 (4) Where there are no qualified responsive bidders or
34 prospective contractors or vendors who could comply with the
35 requirements of this section and the contract is essential to the state
36 and state residents.

37 (5) Where the contractor or vendor is providing wholesale or
38 bulk water, power or natural gas, the conveyance or transmission
39 of the same, or ancillary services such as spinning reserve, voltage
40 control, or loading scheduling, as required for assuring reliable

1 services in accordance with good utility practice, provided that the
2 purchase of the same may not practically be accomplished through
3 the standard competitive bidding procedures; and further provided
4 that this exemption does not apply to contractors, vendors, or
5 franchises providing direct retail services to end users.

6 (d) (1) In the event that the contractor's or vendor's actual cost
7 of providing a certain benefit for the domestic partner of an
8 employee exceeds that of providing it for the spouse of an
9 employee, or the contractor's or vendor's actual cost of providing
10 a certain benefit for the spouse of an employee exceeds that of
11 providing it for the domestic partner of an employee, the
12 contractor or vendor may not be deemed to discriminate in the
13 provision of benefits if the contractor or vendor conditions
14 providing the benefit upon the employee agreeing to pay the
15 excess costs. ~~In addition, in the event~~

16 (2) *The contractor or vendor is not deemed to discriminate in*
17 *the provision of benefits if the contractor or vendor, in providing*
18 *the benefits, pays the actual costs incurred in obtaining the benefit.*

19 (3) *In the event* a contractor or vendor is unable to provide a
20 certain benefit, despite taking reasonable measures to do so, the
21 contractor or vendor may not be deemed to discriminate in the
22 provision of benefits if the contractor or vendor provides the
23 employee with a cash payment equal to the amount that the
24 contractor or vendor pays to provide that benefit to the spouse of
25 an employee.

26 (e) A vendor or contractor may not be deemed to discriminate
27 in the provision of benefits between employees with spouses and
28 employees with domestic partners, or between the domestic
29 partners and spouses of those employees, if the vendor or
30 contractor does not discriminate in the provision of those benefits
31 between employees with spouses and employees with domestic
32 partners, or between the domestic partners and spouses of those
33 employees, in doing any of the following:

34 (1) Offering the same benefits to employees with domestic
35 partners and employees with spouses and offering the same
36 benefits to domestic partners and spouses of employees.

37 (2) Electing to provide *the same* benefits to individuals ~~in~~
38 ~~addition~~ *that are provided* to employees' spouses and employees'
39 domestic partners.

1 (3) Electing to provide benefits on a basis unrelated to an
2 employee's marital status or domestic partnership status,
3 including but not limited to, allowing each employee to designate
4 a legally domiciled member of the employee's household as being
5 eligible for benefits.

6 (4) Electing not to provide benefits to employees based on their
7 ~~marital~~ marital status or domestic partnership status, or electing
8 not to provide benefits to employees' spouses and to employees'
9 domestic partners.

10 (f) (1) Every contract subject to this chapter shall contain a
11 statement by which the vendor or contractor certifies that the
12 vendor or contractor is in compliance with this section.

13 (2) The department or other contracting agency shall enforce
14 this section pursuant to its existing enforcement powers.

15 (3) (A) *If a vendor or contractor falsely certifies that it is in*
16 *compliance with this section, the contract with that vendor or*
17 *contractor shall be subject to Article 9 (commencing with Section*
18 *10420), unless, within a time period specified by the department*
19 *or other contracting agency, the vendor or contractor provides to*
20 *the department or agency proof that it has complied, or is in the*
21 *process of complying, with this section.*

22 (B) *The application of the remedies or penalties contained in*
23 *Article 9 (commencing with Section 10420) to a contract subject*
24 *to this chapter shall not preclude the application of any existing*
25 *remedies otherwise available to the department or other*
26 *contracting agency under its existing enforcement powers.*

27 (g) Nothing in this section is intended to regulate the
28 contracting practices of any local jurisdiction.

29 (h) This section shall be construed so as not to conflict with
30 applicable federal laws, rules, or regulations. In the event that a
31 court or agency of competent jurisdiction holds that federal law,
32 rule, or regulation invalidates any clause, sentence, paragraph, or
33 section of this code or the application thereof to any person or
34 circumstances, it is the intent of the state that the court or agency
35 sever that clause, sentence, paragraph, or section so that the
36 remainder of this section shall remain in effect.

1 SEC. 2. Section 10295.3 of the Public Contract Code shall not
2 be construed to create new enforcement authority or responsibility
3 in the department or any other contracting agency.

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